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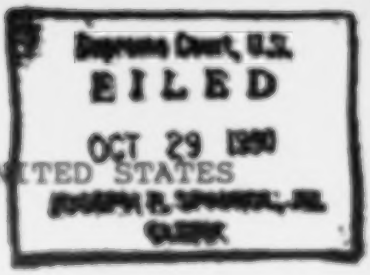

CASE NO

IN THE SUPREME COURT OF THE UNITED STATES

1990 TERM

James Clifton Walsh

Petitioner

v

Commonwealth of Virginia,

Respondent.

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT

FROM THE SUPREME COURT OF VIRGINIA

James Clifton Walsh
447 Institute Hill
Lexington, Va 24450
703-463-6627

QUESTIONS PRESENTED

1. When a defendant in a criminal prosecution in Virginia lives and works in North Carolina, is sane and competent, and wishes to be represented by his spouse who lives and works in the Virginia town where the trial will occur but the spouse is not licensed in Virginia, does the defendant's right to due process, a fair trial and representation entitle him to select his spouse as his representative, assuming the state has no financial obligation to the spouse and the defendant is willing to waive any and all objections which he may have based upon the representation by his spouse? (Question common to both cases)

2. When a state confirms that a trial will occur at a particular time and place and as the defendant enters the town on Friday for the trial on Monday he is arrested for the same offense and the state fails to proceed with trial as

scheduled on Monday and the state schedules the trial for the second arrest and the defendant appears at the time and place scheduled and no judge or jury is present and a judge, who at that time is an adverse party in a civil action initiated by the defendant, enters, without the defendant's knowledge, a factually incorrect order continuing the case, should the defendant's motion for a dismissal of charges arising from the second arrest be granted?

3. When a defendant in a criminal prosecution requests that the prosecution produce a tape-recording made at the time of the stop/ticket/arrest is the defendant entitled to have the recording produced and entitled to a continuance if the recording is not produced; does due process and the right to a fair trial entitle the defendant to access to the tape recording?

4. When a defendant requests that various individuals be subpoenaed as witnesses based upon his belief that they possess information which can/will/does show that he is the victim of a conspiracy and fabricated charges ant the individuals are not subpoenaed and the defendant requests a continuance is the defendant entitled to a continuance; does the rights of due process and a fair trial entitle the defendant to call the witnesses and question them?

5. When a defendant requests that subpoenas duces tecum be issued for various items which he believes to exist and indicate that he is being singled out for unusual or special treatment and is the victim of harassment and conspiracy, is the defendant entitled to have the subpoenas served and entitled to a response? If they are not served and the items are not produced and the defendant

requests a continuance is he entitled to a continuance?

6. When the state's case is the testimony of the ticketing/arresting office and that officer was caught lying under oath (about changing charges/tickets) in the prosecution of Robert Hawkins during the same session of district court that he testified against the defendant, in circuit court is the defendant entitled to show the officer's habit of changing tickets and lying under oath and if the defendant has requested that Robert Hawkins be subpoenaed as a witness and he has not been subpoenaed, is the defendant entitled to a continuance?

7. If the defendant believes that he is the victim of conspiracy and harassment and fabrication of charges and wishes to show surrounding circumstances which he believes will lead to that inference, does he have the right to show these

circumstances, and assert this defense?

LIST OF PARTIES

Petitioner	James Clifton Walsh
Respondent	Commonwealth of Virginia

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OPINIONS BELOW

On April 21, 1989 the defendant was convicted of speeding in the circuit court of Rockbridge County Virginia (Circuit Court No CR 88000336-00). He appealed the case to the Court of Appeals of Virginia which affirmed the verdict on May 4, 1990 and again on rehearing (Court of Appeals Record No 0747-89-3). He appealed it to the Virginia Supreme Court which affirmed the verdict of the court of appeals on July 3, 1990 and denied the petition for rehearing on September 21, 1990 (Supreme Court of Virginia Record No 900812).

On January 12, 1990 the defendant was convicted of speeding in the circuit court of Rockbridge County, Virginia (Circuit Court No CR 89000611-00) and filed a petition for appeal in the Court of Appeals of Virginia. The petition for appeal and

petition for a rehearing were denied (Virginia Court of Appeals Record No 0224-90-3) and the defendant filed a petition for appeal in the Supreme Court of Virginia which was denied on August 27, 1990.

JURISDICTION

The Supreme Court of the United States has jurisdiction to hear the appeal under 28 USC 1257; since, the defendant alleges violations of his constitutional rights to due process, fair trial and representation as guaranteed by the United States Constitution.

CONSTITUTIONAL PROVISIONS

The defendant alleges he was deprived of his rights to due process, a fair trial and representation as guaranteed by the United States and Virginia Constitutions.

PERTINENT FACTS AND HISTORY

In October 1985 the defendant was improperly arrested in Buena Vista, Va for trespassing. The circumstances and facts surrounding the defendant's arrest were such that the defendant could not legally be found guilty; the defendant was sitting on a public bench at a public fountain, on a public street corner, adjacent to a public library, reading a book. He was disturbing no one and except for two police officers no one objected to the defendant's presence on the bench. The defendant was tried and convicted before Judge Hess in district court. The defendant was tried and convicted before Judge Honts in circuit court. At both trials the defendant explained why he was not guilty and could not be convicted. The defendant appealed his conviction to the Court of Appeals of Virginia. In an unpublished decision, the Court of Appeals reversed the conviction and

remanded the case with instructions that the charges be dismissed; because, the defendant could not legally be convicted of trespass. (Court of Appeals Record No 0371-86-3 Circuit Court No C85-331)

On October 9, 1987 the defendant filed a civil action in federal court and named various persons involved in his improper arrest and prosecution as defendants. Mr Hess and Mr Honts were among the individuals named as defendants. On April 18, 1989 the U S Court of Appeals decided the case (case No 88-2940 CA-87-417-R) and issued an unpublished decision.

Since instituting that action the defendant has received four tickets in Rockbridge County/Lexington, Virginia; for convenience they are referred to as first, second, third and fourth tickets. The second and fourth tickets are the ones producing this petition for certiorari.

On May 15, 1988 the defendant was

stopped by officer Mark Ramos of the Lexington, Va police. The defendant was given a (first) ticket for running a stop sign and was arrested for driving without a license. The defendant was taken before a local magistrate and the defendant's wife produced his valid North Carolina drivers license and posted the amount of bond requested by the magistrate. The magistrate, nevertheless, ordered the defendant jailed. The defendant was jailed briefly even though the bond had been posted and the defendant had promised to appear at the trial.

At trial in district court Mr Joyce, assistant commonwealth's attorney for Lexington, Va, appeared and prosecuted the defendant. The defendant explained that he was not guilty; the judge and prosecutor disregarded the evidence and the law and the judge found the defendant guilty on both charges. The defendant paid the fine for

running a stop sign and gave notice of appeal for the driving without a license charge.

The driving without a license charge was scheduled for jury trial in circuit court on Monday, October 31, 1988. On Thursday, October 27, 1988, and Friday, October 28, 1988 the clerk of circuit court's office and the commonwealth's attorney's office indicated that the trial was scheduled to occur and would occur on Monday, October 31, 1988. On Friday, October 28, 1988, as the defendant entered Lexington, Va, he was stopped by Officer W C Kutz. The officer indicated that the defendant had been speeding and driving without a license. The defendant made no response and Officer Ramos (from the first ticket) appeared and said the defendant was driving without a license and was scheduled for a trial, on Monday, for driving without a license, but they had decided that they probably would not proceed

on that charge. The defendant was again arrested and taken to a magistrate and released on an "unposted" bond on the condition that he "Must not operate a motor vehicle". This stop/arrest/ticket is hereafter called the second ticket and is the first ticket which the defendant seeks to appeal to this court.

On Monday, October 31, 1988, the defendant appeared in Circuit Court for his scheduled trial; no clerk was present; no judge was present; no prosecutor was present; no jury was present; no one, other than the defendant, was present. On November 4, 1988 the charge was nolle prosequi by the commonwealth's attorney.

The entire stop/arrest/ticket process on October 28, 1988 was a "set up" and fabrication to give the prosecutor and the Lexington police "a second shot" at the defendant. On the first ticket the defendant had been convicted of driving

without a license; but the law and facts would not support that conviction and the defendant had appealed. The commonwealth's attorney and the clerk of court confirmed that the trial would occur on October 31, 1988 eventhough they knew it would not and the defendant was arrested immediately upon entering town on October 28, 1988.

The defendant was tried on the second ticket (Officer Kutz's 10-28-88 ticket) in district court. The defendant requested that his wife be allowed to represent him; the request was denied. Mr Joyce appeared and prosecuted the defendant on those charges. Mr Joyce argued with the Judge and he and the Judge left the courtroom for private conversations which the defendant did not hear. The defendant testified that he was not speeding. The officer testified that the defendant was speeding and that he clocked the defendant on radar but did not show the radar to the defendant. The

defendant was found not guilty of driving without a license and was convicted of speeding. The defendant gave notice of appeal and requested a jury trial. A trial date of February 13, 1989 was set and in a letter dated January 25, 1989 Ms Sylvia P (King) Coleman confirmed the date. The defendant appeared in circuit court on that date; the commonwealth's attorney was present; no jury was present and no judge was present in the court room; no trial occurred and the defendant did not request or agree to a continuance. The defendant heard Judge Hont's voice in a back room which various individuals entered and left; however, the defendant never saw Judge Honts and never spoke to or communicated with Judge Honts directly or indirectly. The commonwealth's attorney indicated that the defendant could leave because Judge Honts could not hear the case because of conflict of interest.

At that time Judge Honts and the defendant were adverse parties in a civil action (U S District court for the Western District of Va, Roanoke, Case No CA 87-417-R & U S Court of Appeals, Richmond, Va Case No 88-2940); nevertheless, Judge Honts entered a factually inaccurate order continuing the case. He said the defendant appeared before him and requested a continuance. The defendant did not see the judge or communicate directly or indirectly with the judge. The defendant did not request a continuance. No one asked the defendant if he would agree to a continuance; he would not have agreed. When the defendant appeared in court he attempted to anticipate the motions he wanted to make and had typed copies of the motions to be handed to the judge. He did not give the judge a motion for a continuance on February 13, 1989; because, he did not see a judge, and would have opposed a continuance.

The defendant worked in North Carolina; his wife worked in Lexington, Va. The defendant missed a day of work each time he appeared in court. If the defendant had been told that the case was being continued, he would have objected and attempted to place a written objection in the record. The defendant did not received a copy of the order and learned that the case was still on the docket and scheduled for trial when he called the clerk of circuit court to determine the date for trial on his third ticket. He learned of the order while preparing his appeal to the Virginia Court of Appeals.

On Monday, November 9, 1988 as the defendant left Lexington, Va to return to North Carolina, he was given a third ticket. The defendant was charged with speeding. In district court the defendant testified that he could not state what his speed was at the time the officer indicated he passed him,

but stated his belief that he was driving normally and not speeding at the time the officer said he was speeding. The officer testified that he clocked the defendant on radar but did not show it to the defendant. The judge said that although the defendant expressed an honest belief that he was not speeding, that was not enough to prevail against the officer's testimony regarding the radar proof of the defendant's speed. The judge found the defendant guilty. The defendant gave notice of appeal. T h e defendant subsequently called the office of the Clerk of Circuit Court to verify the trial date for the third ticket and was informed that he had two cases scheduled for trial on April 21, 1989.

The first case scheduled for trial on April 21, 1989, was the second ticket (officer Kutz's 10-28-88 ticket). The defendant appeared at the scheduled time and asked that the charges based on the second

ticket be dismissed (and filed a written motion) since he had already appeared at the time previously scheduled for trial and the trial had not occurred. The motion was denied; the defendant preserved the objection and assigned it as error when he appealed through the Virginia appellate court system. The defendant also requested that his wife be allowed to represent him in the case and agreed to waive any objections which he might have based upon his wife's representation (and filed a written motion). The motion was denied and the defendant preserved his objection and assigned it as error throughout his appeal through the Virginia appellate court system.

The trial occurred. The officer testified that he clocked the defendant on radar and that the radar indicated that the defendant was speeding. On cross-examination the officer stated that he was not required to lock the radar in or show it

to the defendant and admitted that he had not. The defendant testified that he was not looking at his speedometer at the time the officer stated that he was speeding and could not state his speed but stated his belief that he was not speeding. The defendant's wife testified that she was following the defendant as he entered town but was stopped by a red light immediately before the place the officer said he clocked the defendant. She could not state the defendant's speed but stated her opinion that the defendant was not speeding. The defendant was convicted. Upon consideration of the costs the defendant abandoned his circuit court appeal of the third ticket and appealed the second ticket to the Virginia Court of Appeals and subsequently to the Va Supreme Court and now petitions for certiorari to this court.

The basis of the defendant's appeal was a denial of due process, denial of

representation, and a pattern of acts which showed that the defendant was singled out for special treatment, harassment, and persecution and the fact that the Commonwealth had on two separate occasions in the recent past scheduled trials for the defendant and then failed to proceed on the date scheduled and in the most recent case a biased judge had issued an order which was factually incorrect and continued the case. In a decision dated May 4, 1990, the court of appeals of Virginia denied the defendant's petition for appeal. The Court of Appeals of Virginia called the Commonwealth's failure to prosecute the case on February 13, 1989 an unfortunate misunderstanding but said "this one event does not constitute a 'pattern of scheduling.'"

It was not just "one event"; it was the second time that the Commonwealth had scheduled a trial and the defendant had

missed a day of work in another state to be in court on the day the Commonwealth had selected and no judge or jury was present. The first "misunderstanding" occurred after the clerk of circuit court and the commonwealth's attorney had confirmed the date; the second "misunderstanding" involved a factually inaccurate order entered by a judge who was on opposite sides of a civil action from the "criminal defendant". "The confusion regarding the trial date" was part of a pattern of abuse, persecution and falsification.

The court of appeals of Virginia also said the defendant had no right to be represented by his wife, Vonda Walsh, since she was a nonattorney and that she could not have represented the defendant since she appeared as a witness and the rules of the state bar would not allow a person to appear in an action as both a witness and an advocate. This holding is wrong for reasons

stated elsewhere in the petition for a writ of certiorari.

The Supreme Court of Virginia denied the defendant's petition for appeal stating that the case did not involve a substantial constitutional question (Supreme Court of Virginia Record No 900812, Court of Appeals Record No 0747-89-3, Circuit Court No. CR 88000336-00).

The defendant subsequently received a fourth ticket in Lexington, Va and was convicted and sought to appeal that conviction to the Virginia Court of Appeals and the Virginia Supreme Court and sought to consolidate that appeal with the appeal of the second ticket and is also petitioning this court for a writ of certiorari on that conviction. The petitions and motions to consolidate were denied.

On Monday, November 20, 1989, as the defendant was leaving Lexington, Va to return to North Carolina he was stopped by

a Lexington, Va policeman, Officer Ruley. The officer said the defendant was speeding at 35 miles per hour and asked for license and registration; the defendant presented his valid North Carolina license and stated that the automobile belonged to his wife and the defendant could not locate a registration card. The officer made several trips between his vehicle and the defendant's vehicle. The officer asked if the defendant had a Virginia driver's license; the defendant said no. The officer said DMV said he did. The officer pressed his walkie talkie button and told the dispatcher to repeat the information. The walkie-talkie said the defendant had a Virginia driver's license and lived at some address in Lexington. The defendant and the officer looked at each other for a few seconds. The officer asked the defendant for his social security number; the defendant said he would rather not give his

social security number out and the officer said the defendant was, would be or could be placed under arrest for "refusing to cooperate." Another officer asked the defendant to step back to the arresting officer's vehicle. The arresting officer showed the defendant a number written on the officer's copy of the ticket and asked the defendant is it was his social security number. The defendant said he did not wish to give out his social security number, and asked if it was essential that they have his social security number. The arresting officer said it was necessary and said he was, could or would arrest the defendant for "giving false information to a policeman" and said that he had asked the defendant if the defendant had ever had a Virginia drivers license and the defendant had said no. The defendant immediately said "no that is not what you asked; you asked me if I had a Virginia drivers license and I told you I

did not; you did not ask me if I had ever had a Virginia license; in the past I have had a Virginia license, but I surrendered it and it was cancelled when I got my North Carolina license; because, North Carolina will not issue a drivers license to someone who has a license in another state; my Virginia license was cancelled and returned to Virginia." The defendant signed the ticket and said "you said you clocked me going 35 miles a hour; did you lock it in." The officer said he had clocked the defendant at 38 miles per hour and that he was not required to lock it in. The defendant repeated the question, and the officer admitted that he had not locked it in. (The defendant does not mean to indicate that the quotes are exact quotes, but they are very close and are essentially correct.)

On November 28, 1989 the defendant appeared in district court to defend against

the fourth ticket. Judge Hess (who had recently been a party in a civil action filed by the defendant) was the Judge.

On November 28, 1989, the defendant was present in district court in Lexington, Va when the case of Robert Preston Hawkins, case (T89-1679), was called. Officer Ruley testified that he had observed Robert Preston Hawkins commit a particular offense and issued Mr Hawkins a ticket for that offense. Mr Hawkins testified that that was not true and stated that the officer had changed the ticket; Officer Ruley testified that he had not. Mr Hawkins repeated that he had and Mr Ruley repeated that he had not. Judge Hess said he was looking at the ticket and it did not appear altered. Mr Hawkins said that the officer had changed the ticket and the officer denied it. Mr Hawkins testified that the officer had started writing a ticket for one charge and learned that Mr Hawkins was a student and

decided to charge him with a more serious offense and had folded the first ticket up and issued a different ticket. Judge Hess said "so you are saying that he destroyed the first ticket and wrote a second ticket." The officer denied it and the student said that was what happened. Judge Hess said "you are saying that there will be a gap in the officer's ticket book for the ticket you say he destroyed." The officer immediately recalled that he had started to write a ticket and then decided that Mr Hawkins required a more serious charge. Faced with Officer Ruley's admission Judge Hess berated Mr Hawkins for breaking the traffic law and dismissed the charges against him.

When Judge Hess called the defendant's case he said he assumed the defendant did not mind if Judge Hess heard the case. The defendant stated that he did and asked that Judge Hess recuse himself. The defendant stated his belief that he would not receive

a fair trial from Judge Hess and stated that he was willing to wait for an alternate or substitute judge as he had in the past. Judge Hess suggested that he was not aware that the defendant had a case in court that day and suggested that the defendant should have known that Judge Hess would be the judge and should have notified Judge Hess if he did not want Judge Hess to hear the case.

During the multiple prosecutions, the defendant's cases were not called until Mr Joyce, the commonwealth's attorney, was present to prosecute the case. Mr Joyce did prosecute this case as well as the other traffic cases against the defendant; each time the defendant appeared in district court he saw similar cases tried without involvement by the commonwealth's attorney. The typical traffic case was disposed of using only the judge, the ticketing officer, and the defendant in that case. However, every time the defendant was tried the

commonwealths attorney appeared and prosecuted the defendant and the defendant's cases were never called until the commonwealths attorney had arrived to prosecute the defendant. The current case was not called until the prosecutor arrived and there was no indication that Mr Joyce was surprised to see the defendant. It appeared that he was there for the purpose of prosecuting the defendant.

Judge Hess asked if there were legal actions currently in the system involving the defendant and Judge Hess; the defendant was aware of none. Judge Hess indicated that he would hear the case over the defendant's objections. At his trial, the defendant requested that Vonda Walsh represent him; the motion was overruled.

During the trial the officer was questioned about arresting or threatening to arrest the defendant for "refusing to cooperate" and for "giving false information

to a police officer". Initially he clearly and forcefully denied that either arrest or threat to arrest had occurred. At a latter point in cross examination the officer was caught in a slip of the tongue and he said no he had not made the statement regarding "refusing to cooperate" or "giving false information" at that particular time and place during the stop, but at another time and place in the stop. The defendant confronted the officer with his inconsistent statements and asked what was the truth (did he make neither statement; did he make both statements; did he make only one and if it was one which one was it). The officer said the defendant was wrong and he was right and he had the conversation on tape. The defendant requested that the tape be produced to clear up the matter. The officer said the tape was not available; that it was at his home. The defendant asked for a continuance to allow the tape to

be produced. Judge Hess denied the request. The defendant pointed out that this went directly to the officer's credibility and that the officer had just been caught in a lie, under oath, relating to altering tickets/charges during that same session of court. Judge Hess immediately said that had nothing to do with the defendant's case and stated that he had dismissed the charges against the other defendant because there seemed to be something to that defendant's allegations. The defendant pointed out that the officer's copy of the ticket contained the note that he had locked/clocked the defendant's speed on radar. The defendant pointed out that the word had been changed. Depending on which word was read, the officer's notes either indicated that he had "clocked" or "locked" the defendant's speed on radar and the word appeared to have been changed from locked to clocked (a reasonable inference would have

been that he altered the word to make it consistent with the tape).

The defendant testified that he did not think he had been speeding and stated that he looked at his speedometer immediately upon seeing the officer's lights behind him and that he was going less than 35 mph at that time. Judge Hess found the defendant guilty and assessed fine. The defendant asked that the judgment not be entered until the defendant had had the opportunity to hear the tape and asked that Judge Hess enter an order directing the tape be produced. Judge Hess refused and said the defendant could take it up on appeal.

The defendant gave notice of appeal. The case was scheduled for January 9, 1990. A clerk called the defendant's wife at her Lexington phone number and told her that the date was not convenient for a judge or the commonwealth's attorney or someone and that the defendant should not appear at that time

but the defendant was not personally informed until Judge Honts and the commonwealth's attorney decided that January 12, 1990 was a convenient date, and Judge Honts' secretary sent a letter to the defendant's permanent North Carolina address stating that the case was s-heduled for trial on January 12, 1990 and requesting that requests for subpoenas be filed by December 29, 1989. The defendant received no order and dates appeared to be requests/guidelines not commands/ deadlines; although, they were later interpreted to be mandatory dates.

The defendant did not receive the letter immediately but upon receiving the letter, the defendant immediately notified the clerk of circuit court that he could not meet the dates suggested in the letter and took time off work to drive to Lexington to hand delivered those requests which he could formulate at that time. The clerk of

circuit court personally reviewed the letter and photocopied it. He pointed out that the items could not possibly be produced by January 1989 and the defendant changed "1989" to "1990". The clerk still expressed doubt that the items could be produced by the requested date; since, he said the police officers would not serve the subpoenas duces tecum until the next week; nevertheless, he led the defendant to think the subpoena and subpoena duces tecum would be served.

Apparently the clerk, discussed the case with the judge who ultimately heard the case, and the commonwealth's attorney shortly after the defendant left; since, in a letter dated January 2, 1990, and addressed to Rt 2, Box 3, Ferguson, NC, the clerk stated that he had talked to the Judge and the commonwealth's attorney and had decided that the subpoena duces tecum would not be issued since they were not timely

filed, overbroad and burdensome and went to persons not subject to notice in the particular case (Rt 2, Box 3, Ferguson, NC was the claimant's permanent North Carolina address; however, the clerk of circuit court was informed in prior cases that communications sent to that address are not immediately available to the defendant and the clerks and commonwealths attorney were aware that Vonda Walsh was the defendant's spouse and had a local address and phone number; also the request for subpoena duces tecum and subpoena contained the defendant's temporary North Carolina address and Vonda Walsh's Lexington, Virginia address and the defendant's wife was the one who was informed that January 9, 1990 was not an acceptable date). As soon as the defendant learned of the failure to serve, Vonda Walsh delivered a copy of the request to the commonwealth's attorney; the defendant had already mailed a copy to the commonwealth's

attorney. The requests were again presented to tne clerk. The defendant requested that various individuals be served subpoenas to produce evidence which would show that the defendant was the victim of a conspiracy and harassment and was singled out for special treatment and requested subpoenas that various individuals be subpoenaed as witnesses. Mr Hawkins, Mr Joyce, Mr Honts and Mr Hess were among the individuals to be subpoenaed as witnesses; none of these persons were served.

Based upon his dealings and experiences with the police, prosecutors, judges, and courts in Lexington and Buena Vista, Virginia, the defendant legitimately felt that various individuals were out to get him and were persecuting him and constructing situations and fabricating charges against him. The defendant felt that there was documentary evidence, communications, special instructions from various

individuals (prosecutorial, judicial, and police) to other individuals indicating the defendant was to receive "special/different" treatment. Based upon that belief the defendant requested various items and information which would have confirmed his suspicions if they had been produced and would have tended to show the defendant's innocence. The defendant also did not believe that the officer knew how to operate radar and asked for information regarding radar. If the defendant was wrong about the special treatment and harassment, it would have been simple for the various individuals to say this does not exist. The subpoena duces tecum were not served. Subpoenas for witnesses were not served. Potentially exculpatory evidence was not produced. The prosecutor refused to produce the tape which the officer had made at the stop.

On January 12, 1990 the defendant appeared in circuit court in Lexington and

asked for a continuance because his subpoena duces tecum and subpoenas had not been served (and filed written motions). In particular the defendant stated that the commonwealth had not subpoenaed the defendant's witnesses and had not produced a tape which the officer had made at the time of arrest and had not produced other requested evidence. The judge found that since the commonwealth's attorney had "made available" an alleged transcript of the tape the day before the trial and it had been picked up by Vonda Walsh the day before the trial (the defendant was at work in North Carolina when the commonwealth's attorney called him the day before the trial to say he could have a copy of the alleged transcript), that the defendant had not been prejudiced by the refusal to produce the tape. The commonwealth admitted that the "transcript" was incomplete and was prepared by the prosecutor's secretary who could not

understand everything on the tape because of its reportedly poor quality; however, when he testified the officer said he had played the tape for various officers and persons at the police station. The judge refused to order the tape be produced or to grant a brief continuance.

The officer purportedly taped a portion but not all of the stop. The playing of the tape for the amusement of various persons at the police station is not entirely consistent with other statements regarding the poor quality of the tape.

The officer's selective taping of portions of the stop could lead to the inference that the defendant was being set up for an arrest for giving false information to the officer. According to the officer's testimony and the purported transcript the initial part of the stop was not taped; in that portion of the stop the officer asked if the defendant had a

Virginia drivers license. In the taped portion of the stop when the second officer was present the arresting officer said the defendant could be or was being arrested for giving false information; because, the officer said he had asked the defendant if he had ever had a Virginia license and the defendant had said no. If the defendant had not had the foresight to correct the officer's misstatement, he probable would have been arrested and convicted for giving false information to the officer. In any event the taping of portions of the stop and the combination of unusual events made the defendant's suspicions reasonable.

The failure to serve the subpoena duces tecum and failure to supply any of the requested information certainly justified the defendant's request for a continuance.

If Mr Hess, Mr Hontz, or Mr Joyce directed, participated in or knew of persecution of the defendant, or knew of

facts which would show or lead to the inference that the defendant was being persecuted or the victim of fabricated charges, then the defendant was entitled to question them as witnesses. Mr Joyce and the trial court judge indicated that Mr Joyce would not be testifying and stated that Mr Hess and Mr Honts would have been incompetent to testify. The fact that they had official titles did not make them incompetent to testify to facts which they knew and which could show the defendant's innocence. There was sufficient unusual facts and circumstances to cause the defendant to think that the various individuals, whom he sought to subpoena, could provide evidence either intentionally or unintentionally which would tend to show the defendant's innocence. It was wrong to refuse to subpoena them as witnesses and to deny the defendant the opportunity to question them and to deny the defendant's

request for a continuance based upon the failure to subpoena them.

The commonwealth's case was the unsubstantiated word of the ticketing officer. There was evidence which could have led to the conclusion that he initially wrote on his ticket that he had locked his radar in and latter changed it when it was obviously inconsistent with the tape recording of the incident. On the same day that the defendant's case was heard in district court, Robert Preston Hawkins' case was heard and the ticketing officer was caught in a lie under oath; the under oath lie had to do with altering a ticket. The defendant asked that Mr Hawkins be served as a witness; he was not and the defendant asked for a continuance because of the failure to serve Mr Hawkins. Based upon the letter from Judge Honts secretary the circuit court judge found that the defendant was required to present his requests for

subpoenas by the date stated in the letter and had failed to meet that date with respect to Mr Hawkins and was not entitled to a continuance because of the failure to serve Mr Hawkins.

On January 12, 1990, the defendant appeared in district court and made multiple motions. In one of those motions the defendant requested that Vonda Walsh be allowed to represent him (and filed a typed motion). The defendant agreed to waive all objections or complaints which he may have had because of Vonda Walsh's representation if she were allowed to represent him. Vonda Ann Walsh was present and was willing to represent the defendant, her spouse, if the judge granted the motion. The defendant was competent to select Vonda Walsh as his representative. The judge refused to allow Vonda Walsh to represent the defendant.

Denying the defendant's request that his spouse be allowed to represent him violated

the defendant's right to competent representation, a fair trial and fundamental due process for the reasons stated in a subsequent portion of the petition. Refusing to serve the defendant's subpoena duces tecum and witness subpoenas and refusing to produce the requested evidence entitled the defendant to a continuance and refusing to grant the continuance denied the defendant a fair trial and fundamental due process.

After the defendant's requests for a continuance and request to be represented by his spouse were denied, the trial occurred.

The commonwealth case was the testimony of officer Ruley. Over the defendant's objections the commonwealths attorney led the officer through extensive testimony regarding the use of radar. The officer testified that he clocked the defendant on radar and the defendant was speeding. On crossexamination he admitted that he had not

locked the radar in. He admitted that he had taped the stop and played it for various persons. A portion of his testimony regarding the placing of the defendant in the police vehicle was clearly contradicted by the testimony of both the defendant and Officer Smith who was also present during a portion of the stop. The defendant testified that he did not see the officer pass him and could not state his precise speed at the time and place the officer stated he clocked the defendant; however, the defendant stated that he did not slow down as he left town but speeded up and stated that when he saw the officer behind him he immediately checked his speedometer and at that point his speed was less than 35 mph and therefor it must have been less than 35 mph at the time and place the officer said he clocked the speed.

The judge would not allow the defendant to testify to the circumstances which would

have showed a conspiracy to harass and fabricate charges against the defendant and told the defendant to begin testifying with the phrase "On the day in question." The defendant was not allowed to show the officer's history of lying under oath about altering tickets.

In his closing statement the commonwealths attorney stated that if they had wanted to frame the defendant the officer could have driven down the road at the appropriate speed and shot a tree to set his radar at the appropriate setting; there was no evidence of this in the testimony introduced at trial. The prosecutor testified as an expert witness on radar use and abuse in his closing statement while the defendant was denied access to the basic policies and information regarding the officer's use of radar. In his closing statement the prosecutor suggested that the defendant had some obligation to prove that

his speedometer was wrong or that the police were wrong or that the defendant was innocent. Each of these suggestions was improper and unfair and in combination with the multitude of other abuses denied the defendant a fair trial and fundamental due process.

The defendant was convicted. After the verdict was announced the defendant requested a new trial because the verdict was not consistent with the evidence and because he was denied competent counsel, in that Vonda Walsh was not allowed to defend him and the defendant had represented himself. The judge castigated the defendant for making the motion; the judge stated that the motion, and the defendant's attitude and actions in the present case and in the defendant's prior attempts to exercise his rights in the judicial system showed the defendant's improper attitude and attempts to take advantage of the judicial system.

The defendant immediately apologized; because, he had meant no offense and because he feared that he was being set up for a contempt charge.

The defendant gave notice of appeal and prepared a written statement. While he was preparing the written statement, the defendant contacted the office of the Clerk of Circuit Court and asked if the case had been recorded and asked how he could hear the tapes if it had been recorded. He was told that misdemeanor cases were not recorded and that the case probably would not have been recorded even if he had requested that it be recorded. He was told that if it had been recorded it would have been logged in and it had not been logged in. He was told the case had not been recorded. The defendant prepared and submitted a written statement. After the defendant submitted the written statement the commonwealth's attorney submitted a

"transcript," the defendant did not request the transcript and did not know it was being or could be prepared until it was presented by the prosecution. The transcript was quite accurate; however, the defendant disagrees with it in some respects. The testimony, in several places and respects, as reported in the transcript prepared by the commonwealth, was slightly shaded, slanted and modified. There was a slight softening of the discrepancy between the testimony of the two officers. There were other inaccuracies. While the transcript is accurate in most respects; it is not entirely accurate and the irregularities regarding the logging in of the tapes and the preparation of the transcript are simply one more example of abuse, and unusual behavior on the part of various agents of the commonwealth (in Lexington, Virginia) in their dealings with and treatment of the defendant.

Since the defendant/appellant filed his petition to the United States Supreme Court the clerk of court in Lexington has billed the defendant for all costs associated with both tickets (including the transcript which the defendant did not request or know was being prepared) and notified local newspapers that the defendant has received the two most expensive tickets in local history and will have his driving suspended and caused the Department of Motor Vehicles to suspend the defendant's privilege to drive in Virginia despite the fact that the defendant informed him that the cases were still being appealed and that the defendant was not liable for the costs of the transcript since he did not request it or know it was being prepared.

Following his conviction the defendant attempted to appeal his case to the Virginia Court of Appeals. According to the clerk of the court of appeals the petition for appeal

was due on May 14, 1990. The defendant had printer problems and was running out of time to mail the petition for appeal and thought he had mailed a "rough draft" to the Court of Appeals certified and return receipt on May 14, 1990. He apparently did not since (the petition was denied as untimely and) when he returned from the postoffice thinking he had mailed the draft, the defendant found the draft and mailed it again. The second mailing occurred the same day, May 14, 1990, and would have been timely had it been certified/return receipt; however, the second mailing was accomplished minutes (less than five) after the postoffice window shut and was mailed first class. The draft was, nevertheless, received in the clerks office the following day, May 15, 1990 (as evidenced by a letter from the clerk dated May 16, 1990, indicating receipt on the 15th of a check which the defendant had sent with the

petition for appeal. The defendant requested a rehearing and filed a petition for appeal with the Virginia Supreme Court, but was denied (Supreme Court of Virginia No 90933, Court of Appeals of Virginia No 0224-90-3, Circuit Court number CR89000611-00).

Throughout the process of appealing the fourth ticket the defendant assigned as error, the refusal to produce the tape and other exculpatory evidence sought by the subpoena duces tecum, the refusal to serve the subpoena duces tecum and witness subpoenas, the refusal to allow the defendant's spouse represent the defendant, the denial of the defendant's motion for a continuance, the denial of a fair trial and fundamental due process as demonstrated by the circumstances surrounding the defendant's multiple tickets and prosecutions and the unusual treatment which he received and the trial court's refusal to allow the defendant to show those

circumstances at the trial and the trial court's refusal to allow the defendant to show the officer's practice of lying under oath about changing tickets.

REPRESENTATION

At each of his trials the defendant was entitled to have the representative of his choice in the absence of some compelling reason to deny him that representative. The defendant was aware of Vonda Walsh's training or lack of training and was willing to waive all objections he may have had on the basis of her representation.

The defendant was employed in another state; Vonda Walsh was local. Vonda Walsh is the defendant's wife and, next to the defendant, was the most motivated and concerned representative the defendant could have found. Vonda Walsh would have represented the defendant at no cost; the defendant could not afford to pay a less

motivated person to represent him. The defendant requested, in writing, that Vonda Walsh be allowed to represent at the district court and circuit court levels. When it suited the court or prosecution Vonda Walsh was contacted and informed that a date had been changed and was allowed to pick up a "transcript." The defendant was also aware that Vonda A Walsh had represented herself in traffic cases on occasions and had not been found guilty.

The fact that Ms Walsh was not licensed to practice law in Virginia did not justify denying the defendant the advocate of his choice, assuming he was competent to make the choice and the advocate of choice was willing to represent him.

A defendant has a constitutional right to counsel and in certain situations is entitled to have counsel appointed (Gideon v Wainwright, 372 US 335, 9 L Ed 2d 799, 83 S Ct 792, Escabedo v Ill, 378 US 478, 12 L

Ed 2d 977, 84 S Ct 1758, Pointer v Texas, 380 US 400, 13 L Ed 2d 923, 85 S Ct 1065, Duncan v Louisiana, 391 US 145, 20 L Ed 2d 491, 88 S Ct 1444, Argersinger v Hamlin, 407 U S 25, 32 L Ed 2d 530, 92 S Ct 2006, Scott v Ill, 440 US 367, 59 L Ed 2d 383, 99 S Ct 1158, Cash v Culver, 358 US 633, 3 L Ed 2d 557, 79 S Ct 432). A defendant is entitled to represent himself and may waive his right to counsel provided it is done knowingly and intelligently (Faretta v California, 422 US 806, 45 L Ed 2d 562, 95 S Ct 2525, Johnson v Zerbst, 304 US 458, 82 L Ed 1461, 58 S Ct 1019, Chandler v Fretag, 348 US 3, 99 L Ed 4, 75 S Ct 1, Patterson v Ill, 487 US 285, 101 L Ed 2d 261, 108 S Ct 2389). Although Virginia has statutes against unauthorized practice of law, Virginia specifically allows nonattorney law students to represent persons in certain situations (Code of Va 54.1-3900 to 54.1-3904); nonattorneys represent claimants for social security and

veterans benefits.

The state has an interest in limiting the practice of law to attorneys licensed by the state, in order to promote judicial convenience (courts run smoother with professional trained lawyers), protect the public from frauds and charlatans, and tax the profession; however, none of these interests are sufficient to justify denying a defendant his chosen representative (particularly when the chosen representative is the defendant's spouse) assuming that he is sufficiently competent to make the choice and waives any objections which he might latter assert based upon that choice.

A defendant who is not licensed to practice law has a constitutional right to represent him/herself if he is mentally competent; historically the law has treated husband and wife as one, at least for some purposes. If the courts are able to function and deal with nonattorneys

representing themselves, the court can surely function and deal with nonattorneys representing their spouses. Judicial preference or convenience does not justify forcing a defendant in a criminal case to accept representation which is less than the best that he can reasonably or economically obtain. If a defendant believes that his spouse is the best representative which he can obtain, he has a right to be represented by his spouse. If the state is paying for the representation (as in appointed counsel) that is a different matter. If the state is providing or is required to provide appointed counsel, the counsel must be adequate, but need not be the best available. The best available could be prohibitively expensive and balancing all the conflicting interests, the state would only be required to provide competent representation, but could not provide or force a defendant to accept incompetent

representation. In this case cost to the state is not a factor; although, it may have been a factor in the defendant's choice. If a nonattorney defendant has a constitutional right to represent himself, then when a defendant believes that his best available representative is his nonattorney spouse simple fairness and fundamental due process requires that he be allowed to select the spouse as his representative.

The state has an interest in protecting the public from unscrupulous or incompetent individuals who would pose as a professional and defraud the public. Therefor, the state has an interest in testing, licensing, certifying individuals who wish to hold themselves out to the public as professionals, licensed to engage in the practice of law. This interest can be adequately served without imposing an arbitrary, without exception, ban which will arbitrarily deny a defendant his chosen

representative when he is faced with a criminal prosecution unless that representative is licensed by the state. The state may test individuals and certify a particular level of competence in individuals who wish to hold themselves out as qualified in a particular area and can require full disclosure of the training, experience, etc which the individual possesses and can impose harsh civil or criminal penalties upon individuals who defraud or harm persons by their lack or competence or misrepresentation of their training or competence. The interests do not require that a husband be denied the aid and assistance of his wife. In this case the defendant wanted his wife to act as his representative; he knew her level of experience and competence and waived any objections which might have resulted from her representation. The defendant's spouse would have represented the defendant because

he was her spouse, but has not and would not represent or advise a stranger and has no desire to and would not engage in the business of law. The defendant's spouse has represented herself on traffic tickets; she has not been found guilty each time she has represented herself; she has not represented anyone other than herself and has not considered representing anyone other than herself and her husband. There is not a significant danger that unsuspecting members of the public will be defrauded, duped, or taken advantage of if unlicensed non-attorneys are allowed to represent their spouses. The business regulation, taxation aspects also have no application in this case. The defendant's spouse has not and does not wish to engage in the business of law; she was simply willing to attempt to help her husband ("her other half").

When it ruled on the defendant's appeal of the second ticket, the Court of Appeals

of Virginia said the defendant's spouse was not licensed; therefor, she could not represent the defendant and also stated that since she had testified as a witness, she could not represent the defendant since Virginia State Bar rules do not permit an individual to appear in a trial as both an attorney and as a witness. The defendant's spouse did not testify until the trial court had ruled that she could not represent the defendant. If the defendant had been told to chose between his wife as a witness and his wife as a representative he could have chosen her as a representative; however, there was no basis for forcing such an election, since Ms Walsh should have simply been allowed to represent her husband. The State Bar Rules had no application to the case but even if they were applicable, they do not pose an absolute bar to a person appearing as both a witness and a representative / advocate; there are

recognized exceptions to the prohibitions imposed by the state bar rule. Those exceptions recognize that sometimes an advocate is so special or unique that he/she should represent the "client" even when they may also be required to testify.

The defendant was willing to waive any objection which might have accrued to him based upon representation by his wife. If the defendant was not competent to select his own representative, then he was not competent to stand trial; he was competent to select his own representative and should have been allowed to select his wife. In both cases which the defendant petitions this court to review the defendant asked that his wife be allowed to represent him; he objected to the trial courts refusal, preserved his objection and assigned the refusals as errors on his appeals through the Virginia Court system and respectfully petitions for a writ of certiorari to the

United States Supreme Court to review the denial.

FAIR TRIAL AND DUE PROCESS

The totality of circumstances surrounding the defendant's multiple prosecutions shows that the defendant was denied fundamental due process in the prosecutions of at least the second and fourth tickets.

On the first and second tickets the Commonwealth scheduled trials and failed to proceed when the defendant appeared. A judge who was an adverse party to the defendant issued a factually inaccurate order which continued the second case from February 13, 1989. In combination with the other unusual facts and circumstances this denied the defendant fundamental due process with respect to the second ticket and the defendant's April 21, 1989, motion to dismiss charges arising from the second ticket should have been granted.

On the fourth ticket the district court

judge who heard the case had recently been a party to civil litigation where he and the defendant were on opposing sides. The defendant asked that the judge recuse himself; the request was denied. In district court on the day the defendant was tried for the fourth ticket the officer who issued the fourth ticket was caught lying under oath about changing tickets/charges. He was caught lying about arresting or threatening to arrest the defendant for "refusing to cooperate" or "giving false information". He admitted that he had taped the stop. The defendant asked for the tape at district court and was refused. He asked for it again when he appealed to circuit court and asked for a continuance; the requests were denied. The district court judge indicated that the fact that the arresting officer had just been caught lying under oath about changing tickets / charges had nothing to do with his credibility in

the defendant's case. In circuit court the defendant was not allowed to establish the officer's history of lying under oath. In circuit court the defendant sought to subpoena the person who caught the officer in a lie in district court, but the subpoena was not served. The defendant sought to subpoena other individuals who could have provided information which would have shown that the defendant was the victim of conspiracy and persecution and those subpoenas were not served. The defendant sought subpoena duces tecum for evidence which would have shown he was the victim of harassment and fabrication and they were not served. The defendant requested that his spouse be allowed to represent him and that request was denied. The defendant requested a continuance and was denied.

It may have been naive of the defendant to think that the potential witnesses whom he sought to subpoena would have provided

information which would helped him, or would testified truthfully, or that they could have been caught in falsehoods; however, the surrounding circumstances made it reasonable for the defendant to believe that the information existed and the defendant was entitled to question the individuals. The defendant was denied information which would have established a pattern of persecution and helped show the defendant's innocence. The defendant was not allowed to present the fourth ticket in context and argue that it was a part of a pattern of persecution; the defendant was not allowed to show the officer's history of changing tickets and lying under oath about changing tickets; the prosecutor made improper suggestions that the defendant was required to prove that his speedometer was off or that he was innocent or that the police were wrong or that he was being persecuted. The defendant was denied a fair trial and fundamental due process on

the fourth ticket and petitions this court for a writ of certiorari.

Since the defendant began his appeals additional irregularities have occurred in the clerk's office. The trial of the fourth ticket (second trial) was taped but the tapes were not logged-in in the usual way and the defendant was told that the trial had not been tapped. After the defendant prepared a written statement the commonwealth prepared a "transcript"; the defendant did not request it or know it was being prepared and none was prepared for the first trial (second ticket). No specific defects were identified in either written statement which the defendant prepared. The clerk added the costs of the "superfluous transcript" to the defendant's costs and billed the defendant. Eventhough the defendant informed the clerk that his appeals had not ceased, the clerk then caused the department of motor vehicles to

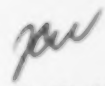
suspend the defendant's driving privileges and informed the local newspaper that the defendant had received the two most expensive tickets in local history.

CONCLUSION

The totality of circumstances warrants an outright reversal of the defendant's conviction on the second and fourth ticket; in the absence of an outright reversal simple fairness and due process require the cases be remanded and the defendant be allowed to present the cases in context and the defendant be allowed to subpoena evidence and witnesses who could provide evidence regarding the existence or nonexistence of a conspiracy, and special or unusual treatment for the defendant. If the defendant is willing to waive all objections which he may have based upon the quality of the representation provided by his wife, his

wife should be allowed to represent him if both agree. Therefor the defendant respectfully requests that this court grant his petition for certiorari.

Respectfully submitted

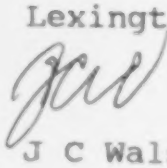


J C Walsh

447 Institute Hill

Lexington, Va 24450

I mailed a copy of this petition and the appendix to the commonwealth's attorneys in Lexington, Va and Richmond, Va.



J C Walsh

447 Institute Hill

Lexington, Va 24450

CASE NO

IN THE SUPREME COURT OF THE UNITED STATES

1990 TERM

James Clifton Walsh

Petitioner

v

Commonwealth of Virginia,

Respondent.

APPENDIX FOR

PETITION FOR WRIT OF CERTIORARI

TO THE UNITED STATES SUPREME COURT

FROM THE SUPREME COURT OF VIRGINIA

James Clifton Walsh
447 Institute Hill
Lexington, VA 24450
703-463-6627

APPENDIX

Second Ticket at Va Court of Appeals #0747-89-3

Denial		1
Rehearing	5-4-90	3

Second Ticket at Va Supreme Court #90812

Denial	6-3-90	4
Rehearing	9-21-90	5

Fourth Ticket at Va Court of Appeals #0224-90-3

Denial	5-17-90	6
Rehearing	6-7-90	7

Fourth Ticket at Va Supreme Court #900933

Denial	8-27-90	8

Va Court of Appeals on 1985 Trespass Charge

Order dated 5-28-87	9

U S Court of Appeal

Order dated 3-24-89	12

Circuit Court nolle proseque of first traffic ticket

Order dated 11-4-88	15

VIRGINIA

In the Court of Appeals of Virginia on Friday the 4th day of May 1990.

James Clifton Walsh, Appellant,

against Record No 0747-89-3

Circuit Court No 88000336-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of Rockbridge County

Before Judges Coleman, Duff and Cole

This petition for appeal is denied for the following reasons:

The trial court did not err in refusing to allow the defendant to be represented by an individual not licensed to practice law in Virginia. His wife is not licensed to practice law in Virginia and is termed a "non-lawyer" in Section 1 (Unauthorized Practice Rules and Considerations) of Part VI of the Rules of the Supreme Court of

Virginia. As such, she is forbidden to practice law in this state. Further, it is a misdemeanor to practice law without a license. Code 54.1-39.04. In addition, the wife appeared as a witness in the case which would have disqualified her from acting as an attorney in the case.

The record indicated that on the date of trial, April 21, 1989, the defendant moved the court to dismiss the charges against him based upon the commonwealth's pattern of scheduling trials and then not appearing at the time scheduled. It is unfortunate that there was a misunderstanding surrounding the trial of this case on February 13, 1989, but this one event does not constitute a "pattern of scheduling." Accordingly, the trial court did not err when it denied both defense motions.

A Copy,

Teste:

VIRGINIA

In the Court of Appeals of Virginia on Thursday the 31st day of May, 1990.

James Clifton Walsh, Appellant,

against Record No 0747-89-3

Circuit Court No 88000336-00

Commonwealth of Virginia, Appellee.

Upon a Petition for Rehearing

Before Judges Coleman, Duff and Cole

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 4th day of May, 1990, and grant a rehearing thereof, the said petition is denied.

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the city of Richmond on Tuesday the 3rd day of July, 1990.

James Clifton Walsh, Appellant,

against Record No 900012

Court of Appeals No 747-89-3

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Finding that the decision of the Court of Appeals does not involve a substantial constitutional question as a determinative issue or matters of significant precedential value, the Court dismisses the petition for appeal filed in the above-styled case Code 17-116.07(A)(1) and (B).

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the city of Richmond on Friday the 21st day of September, 1990.

James Clifton Walsh, Appellant,

against Record No 90812

Court of Appeals No 747-89-3

Commonwealth of Virginia, Appellee.

Upon a petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 3rd day of July, 1990 and grant a rehearing thereof, the prayer of the said petition is denied.

VIRGINIA

In the Court of Appeals of Virginia on Thursday the 17th day of May, 1990.

James Clifton Walsh, Appellant,

against Record No 0224-90-3

Circuit Court No 89000611-00

Commonwealth of Virginia, Appellee.

From the Circuit Court of Rockbridge County

It appears to the Court that the petition for appeal in this case was not timely filed, nor was a motion for extension of time to file the petition timely filed. Accordingly, this petition for appeal is dismissed. See Long V Commonwealth, 7 Va App 503 (1988).

VIRGINIA

In the Court of Appeals of Virginia on Thursday the 7th day of June, 1990.

James Clifton Walsh, Appellant,

against Record No 0224-90-3

Circuit Court No 89000611-00

Commonwealth of Virginia, Appellee.

Upon a petition for Rehearing

On consideration of the petition of the appellant to set aside the judgment rendered herein on the 17th day of May, 1990 and grant a rehearing thereof, the prayer of the said petition is denied.

VIRGINIA

In the Supreme Court of Virginia held at the Supreme Court Building in the city of Richmond on Tuesday the 27th day of August, 1990.

James Clifton Walsh, Appellant,

against Record No 900933

Court of Appeals No 0224-90-3

Commonwealth of Virginia, Appellee.

From the Court of Appeals of Virginia

Finding that the decision of the Court of Appeals does not involve a substantial constitutional question as a determinative issue or matters of significant precedential value, the Court dismisses the petition for appeal filed in the above-styled case Code 17-116.07(A)(1) and (B).

VIRGINIA

In the Court of Appeals of Virginia on Thursday the 28th day of May, 1987.

James Clifton Walsh, Appellant,

against Record No 0371-86-3

Circuit Court No C85-331

Commonwealth of Virginia, Appellee.

Upon an appeal from a Circuit Court of the City of Buena Vista on the 12th day of March 1986.

Before Judges Baker, Coleman and Moon

James C Walsh (appellant) appeals from a judgment of the Circuit Court of the City of Buena Vista (trial court) which approved a jury verdict convicting him of violating code 18.2-119, generally known as the trespass statute. That section of the code has been held to be constitutional when

properly applied. See Hall v Commonwealth, 188 Va 72, 49 S E 2d 369 (1948). It further has been held to apply to government owned property. See Johnson v Commonwealth, 212 Va 579, 186 S E 2d 53 (1972). Although appellant raises a number of issues we need only address the question of whether the evidence in this record is sufficient to support the judgment. Code 18.2-119 specifically requires that before one may be convicted for trespass upon another's property he must have been forbidden to do so by notice given "by a sign or signs posted by such persons (owner, lessee, custodian or other persons lawfully in charge) ... where it may be reasonably seen." Here the warrant of arrest stated the reason for its issuance to be that appellant "without authority (did) trespass upon the land at 21st and Magnolia Ave. after having been forbidden to do so." If appellant is to be found

guilty of a violation of Code 18.2-119 He must be forbidden to trespass by the notice given by the sign and not by general police authority. We have examined the transcripts, picture and plat exhibits, and find that the sign placed on the land at 21st and Magnolia Avenue in Buena Vista did not give the required notice to prohibit appellant from "going upon" the area from which he was arrested and charged. Accordingly, we further find that the evidence was not sufficient to support the judgment of the trial court and reverse, remand and order that appellant be dismissed from further prosecution on this charge. This order shall be certified to the trial court.

UNPUBLISHED

UNITED STATES COURT OF APPEALS

FOR THE FOURTH CIRCUIT

No 88-2940

JAMES CLIFTON WALSH Plaintiff-Appellant

v.

JOSEPH E HESS; GEORGE E HONTS, III; MICHAEL S IRVINE; MAJORIE O'ROARK; SHENANDOAH INTELLIGENCE AGENCY, INC.

and Defendants_Appellees

TOWN OF BUENA VISTA, VIRGINIA; ALAN BUZZARD; PHILIP PATTERSON; COMMONWEALTH OF VIRGINIA; Defendants

Appeal from the United States District Court for the Western District of Virginia, at Roanoke. Jackson L Kiser, District Judge. (C/A No 87-417-R)

Submitted March 20, 1989 Decided April 18, 1989

Before HALL and SPROUSE, Circuit Judges, and BUTZNER, Senior Circuit Judge.

James Clifton Walsh, Appellant Pro Se. Neil Anthony Gordon McPhie (OFFICE OF THE ATTORNEY GENERAL); William Fain Rutherford, Jr., Frank Kenneth Friedman (WOODS, ROGERS & HAZLEGROVE); Frank Anthony Mika, for Appellees.

PER CURIAM:

James Clifton Walsh appeals the district court's dismissal of several claims in his 42 USC 1983 action. We dismiss the appeal for lack of jurisdiction.

Under 28 USC 1291 this Court has jurisdiction over appeals from final orders. a final order is one which disposes of all issues in dispute as to all parties. It "ends the litigation on the merits and leaves nothing for the court to do but execute the judgment." Catlin V United States, 324 U S 229, 233 (1945).

As the order appealed from is not a final order, it is not appealable under 28 USC 1291. The district court has not directed entry of final judgment as to particular claims or parties under Fed R Civ P 54(b), nor is the order appealable under the provisions of 28 USC 1292. Finally, the order is not appealable as a collateral order under Cohen V Beneficial Industrial Loan Corp., 337 U S 541 (1949).

Finding no basis for appellate jurisdiction, we dismiss the appeal as interlocutory. We dispense with oral argument because the dispositive issues have been decided authoritatively.

DISMISSED

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

COMMONWEALTH OF VIRGINIA

VS. ORDER

JAMES C. WALSH

Came this day the Commonwealth's Attorney for Rockbridge County, and, moved for nolle prosequi of the driving on suspended license charge pending against the Defendant.

WHEREFORE, for good cause shown, it is hereby ORDERED and DECREED that the said driving on suspended charge, arising out of an arrest dated May 15, 1988 is hereby nolle prosequed.

ENTERED this 4th day of November, 1988.

George E Honts Judge

I ASK FOR THIS:

Robert N Joyce, Jr. Assistant Commonwealth's Attorney

VIRGINIA

IN THE CIRCUIT COURT OF ROCKBRIDGE COUNTY

COMMONWEALTH

V SPEEDING (47/35 mph zone)

JAMES CLIFTON WALSH

This day came the Attorney for the Commonwealth and James Clifton Walsh who stands charged in a warrant with a misdemeanor, to-wit: speeding (47/35 zone), appeared according to the conditions of his recognizance.

Whereupon the defendant advised the Court that he would represent himself at the trial of this case and that he wished to have this matter heard before a jury: it is, therefore ORDERED by this court that the trial of this case be and it hereby is set for 9:30 a.m. on April 21, 1989.